IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5085 OF 2005

Satish Kumar Modi ..Petitioner.

Versus

The New India Assurance Co.Ltd. & Anr. ..Respondents.

Mr.Uday Lalit, Sr. Advocate with V.K.Tiwari i/by Shashipal Shankar for the Petitioner.
Mr. V.Y. Sanglikar for the Respondent No.1.

CORAM : S. A. BOBDE, J.

Date of reserving the order) : 21.09.2005
Date of pronouncing the order) : 30.09.2005

ORDER :-

1. Rule, returnable forthwith. Mr. Sanglikar, the learned counsel, waives service of rule for the respondent No.1. Heard by consent.

2. The petitioner has challenged the order of the Principal Judge of the City Civil Court at Bombay under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971; upholding his eviction from the premises belonging to the Respondent No.1- New India Assurance Company.

3. The petitioner has been directed to be evicted from a Flat No. 16-A, situate at 7th Floor of the

building known as Mayfair Gardens, Little Gibbs Road, Malabar Hill, Mumbai - 400 006.

4. Admittedly, when the proceedings for evicting the petitioner from the said flat were instituted, the petitioner was in possession of the said flat under an agreement dated 19th July, 2001 for a period of six months. The agreement contains a specific stipulation that the petitioner shall hand over quite and peaceful possession of the suit flat at the end of six months from the date of the agreement. The petitioner's earlier occupation in the suit flat was in his capacity as President of Modi Stone Ltd.; hereinafter referred to as 'the Company'.

5. On 21.11.2001 the respondent No.1 - New India Assurance Co. Ltd., wrote to the petitioner, asking him to hand over the keys of the flat on or before 31.12.2001. The petitioner replied to the respondent No.1, that he would not be in a position to hand over the keys of the flat on or before 31st December 2001 since the period of six months for which he is allowed to stay in the flat would expire only on 19th January, 2002.

6. On 14th December, 2001 the respondent No.1

asked the petitioner to hand over possession on or before 18th January, 2002. The petitioner refuted this request on the ground that the respondent No.1 New India Assurance Company and its holding company i.e. General Insurance Company held 5.63% of the total share holdings in M/s. Mody Rubber Ltd., which is the holding company of Modistone Pvt Ltd.. That the two insurance companies had agreed to participate in an open public offer in which they had agreed to sell their share- holdings to the Present Management Shareholder Group; hereinafter referred to as PMSG of Mody Rubber Ltd., alongwith other i.e. the holding company of Modistone Ltd.. That as a part of this deal, Modistone Ltd., had agreed to surrender the three flats in its possession including the suit flat. According to the petitioner, the said flats were surrendered by Modistone Ltd.. However, the respondent No.1 - New India Assurance Company and the General Insurance Company did not participate in the open offer, which was open upto 31st July, 2001. Thereby they did not divest themselves of their shares in favour of the PMSG of Modi Rubber Ltd.. On this ground, the petitioner was, therefore, not liable to vacate the suit flat.

7. It appears that the petitioner has filed Suit

No. 250/2002 before the City Civil Court and has challenged the surrender of his tenancy and the agreement dated 19th July, 2001 on the ground that the surrender is vitiated by fraud and is not binding upon him.

8. Eventually, the Estate Officer served the notice on the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act,1971; hereinafter referred to as 'the Act'. The petitioner filed his reply, showing cause against the proposed eviction. He gave evidence, through a constituted attorney and also examined another witness on his behalf. The other witness- Mrs. Yash Kohli, examined by the petitioner has also admitted that the petitioner entered into an agreement for a period of six months on 19.07.2001 in his personal capacity and further that the petitioner did not raise any objection with the respondent No.1 - New India Assurance Company. After recording evidence and hearing arguments, the Estate Officer by the order dated 14th October, 2003 held the petitioner to be in unauthorised occupation after 18.01.2002 and awarded damages at the rate of Rs.2,46,000/- per month from 19.01.2002 till recovery of the possession of the premises.

9. The petitioner then appealed to the City Civil Court at Bombay. The Principal Judge who heard the appeal dismissed it by judgment and order dated 06.05.2005. That order is challenged by way of this writ petition under Article 227 of the Constitution of India. It may be noted that as regards the question of damages, the learned City Civil Court has remanded the matter back to the Estate Officer u/s.7 of the Act with direction to assess the damages as per the guidelines given under rule 8 of the Rules framed under the Act, after giving an opportunity to the parties to be heard. Before me,no arguments have been advanced on the question of remand, pertaining to damages.

10. The principal contention of Mr. Lalit, the learned counsel for the petitioner is that the surrender of tenancy of the suit flat by Modistone Ltd. and the induction of the petitioner in the premises for a period of six months under the agreement dated 19.07.2001 for a period of only three months is vitiated by fraud. The fraud, according to the learned counsel for the petitioner, lies in inducing Modystone to surrender flats including the flat in question, on a promise that the respondent No.1- New India Assurance Company and the General

Insurance Company would participate in the open offer and divest themselves of their share holdings in favour of the PMSG, of Modi Rubber Ltd., the holding company of Modistone, and then not adhering to its promise. According to the petitioner since the respondents have not divested themselves of their shareholdings for the benefit of PMSG of Modi Rubber, as agreed, the respondent No.1 -New India Assurance Company is not entitled to evict the petitioner from their premises under the provisions of the Act. The petitioner contends that the surrender of the flat is itself vitiated by the aforesaid fraud and the petitioner is entitled to remain in occupation and cannot be treated as an unauthorised occupant.

11. Mr. Sanglikar, the learned counsel for the respondents on the other hand submitted that the question of fraud cannot be gone into in a proceedings under the Public Premises (Eviction of Unauthorised Ocupants) Act. There is no merit in this contention on behalf of the respondents since in a given case a person sought to be evicted can certainly set up a plea of fraud, which in law, vitiates everything. Indeed the only proceedings in which he can set up such a plea is a proceeding under the said Act, since section 15 of the Act bars a suit in respect of any

question, interalia, pertaining to the eviction from the public premises.

12. The question that arises in this case, however, is whether the plea of fraud has any merit.

13. Admittedly, the petitioner Satish Kumar Modi came into occupation of the suit flat under the agreement dated 19.07.2001. Before that, the flat was in possession of Modistone, which was the tenant of the respondent No.1- New India Assurance Company which is a subsidiary of the General Insurance Company. Modistone Ltd., was in possession of the flat as a subsidiary of Modi Rubber, which came into existence and became the successor in interest of Bombay Tyres some time in the year, 1981. Before the Bombay Tyres, the flat appears to have been in possession of Firestone Tyre, who had originally taken it on a lease alongwith the two other flats in the same building from Sterling Investment Corporation, which is the predecessor in interest of the General Insurance Company.

14. The question whether there was a concluded agreement between the General Insurance Corporation and the Respondent No.1 - New India Assurance Company on one hand and the petitioner can only be examined

from the correspondence on record. There is admittedly, no agreement in writing. In a letter dated 28th July, 2000 by Modistone to General Insurance Corporation, the former appears to have been recorded that the discussions have taken place between PMSG of Modi Rubber Ltd. and the other financial institutions for acquisition of the shares held by the financial institutions of Mody Rubber Ltd.. That in the course of discussion, two flats owned by the GIC under the tenancy with Modistone, would be surrendered when the GIC offers its shares in the public offer and withdrew its nominee from the Board of Mody Rubber Ltd.. These two flats do not include the suit flat.

15. The GIC appears to have written on 5th of September, 2000 to Modistone that the Modistone would have to return all the three flats including the suit flat to enable them to take a view in the matter. On November 15, 2000 the GIC wrote a letter to the PMSG, represented by Shri Vinay Kumar Modi and Dr. Bhupendra Kumar Modi, that they are agreeable to the broad understanding between the financial institutions and the PMSG of Modi Rubber Ltd., provided the company surrenders all the three flats to New India Assurance Co. Ltd. before hand. Thereafter, there is a letter dated 31st May, 2001 from the New India Assurance

Company to Modistone Ltd., calling upon them to surrender the aforesaid three flats in the following words :-

> "In view of the said letter, you are required to surrender aforesaid 3 flats to our company to enable us to communicate the same to other financial institutions."

16. Thereafter there appears to be no correspondence in this regard. From the aforesaid correspondence, it is not possible to discern a clear concluded contract between the GIC and the New India Assurance Company on the one hand and the PMSG of Modi Rubber Ltd., that on the surrender of the three flats, the GIC and the New India Assurance Company would divest themselves of their shareholdings. It is rightly pointed out on behalf of the respondent No.1 by Mr. Sanglikar, Advocate, that the respondent No.1 -New India Assurance and its holding company, the GIC had entered into a discussion alongwith the other financial institutions such as the IDBI and several others, to participate in public offer and divest their shareholdings in favour of the PMSG of Modi Rubber Ltd.. The larger deal was between other

financial institutions alongwith the New India Assurance Company and the GIC, who held shares in Modi Group. There was no specific concluded contract that the GIC and the New India Assurance Company would divest themselves of their share-holdings in return of the flats. Indeed, the correspondence does suggest that there was some broad understanding between all the financial institutions including GIC that they would offer their shares in the public offer and that Modistone would hand over the flats to New India Assurance Company. The Estate Officer and the learned City Civil Court have, however, found that there was no concluded contract to this effect.

17. In any case, the fact remains that Modistone surrendered the tenancy of the three flats including the suit flat to the respondent No.1 the New India Assurance Company and thereafter, they entered into an agreement dated 19th July, 2001, inducting the petitioner in his personal capacity for the first time as a lessee for a period of six months from the date of the agreement upon an express condition that he would not claim any interest in the suit flat in any manner whatsoever.

18. It is difficult to see how the petitioner is

entitled to rely upon certain representations made by the financial institutions, including the respondent No.1- the New India Assurance Company to Modi Rubber and Modistone Ltd., that they would offload their share holdings by participating in the public offer. Even if there were such representations, even according to the petitioner, they were made to Modi Rubber and Modi Stone and not to the petitioner. It is difficult to see how the petitioner can rely on such representations said to have been made to Modi Rubber and Modi Stone that the GIC and the Respondent No.1 -New India Assurance Company would divest themselves of their shareholdings in Mody Group Companies.

19. Going by the evidence on record, it is clear that the petitioner's witness has himself clearly admitted, the following :-

> Firstly, that the agreement under which the petitioner was put into possession of the flat, does not make any reference to any contention relating to the transfer of shares and secondly, that the agreement has no reference to the open participation.

It is on this basis that the Estate Officer and the learned District Judge have concurrently found that the petitioner has failed to establish any link about his induction in the premises and the consensus between the financial institutions including GIC and New India Assurance on the one hand and Modi Rubber on the other hand that the financial institutions would offload their shareholdings.

20. One fails to see how the petitioner can take advantage since the premises were rented to Mody Rubber and Modistone and not to the petitioner. In fact, though contended by Mr.Lalit, there is no evidence on record to indicate that the petitioner was even a part of the PMSG of Modi Rubber Ltd., which intended to acquire the shareholdings of the GIC and New India Assurance Co.Ltd., in the public offer. Therefore, the breach is of a promise made to Modi Rubber and Modistone and not the petitioner. Indeed, neither Modistone nor Modi Rubber have come forward to complain of any breach of promise or trust of the respondent and have admittedly, not taken any action in respect thereof. The Estate Officer and the City Civil Court have rendered their findings that the

petitioner is in unauthorised occupation of the suit flat is based on evidence. Unauthorised occupation is defined in section 2(g) of the Act as follows :-

> "(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

The petitioner is in unauthorised occupation after the expiry of the period of six months stipulated in the agreement dated 19.07.2001. I do not see any perversity or jurisdictional infirmity in the impugned order.

21. The petition is, therefore, liable to be dismissed and is hereby dismissed. Rule discharged.

22. At this stage, the learned counsel for the petitioner requests that this order be stayed for some time since the petitioner has been in occupation for long time. Having regard to the circumstances of the case, the effect and operation of this order is stayed for a period of six weeks from today.

Dt.30.09. 2005 (S.A.BOBDE,J)

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